

**STATUS OF THE APPLICATION**

The Examiner has rejected the single and only claim 1 under 35 U.S.C. §112 as being narrative in form and replete with indefinite and functional or operational language.

The Examiner has also rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Thompson et al. (U.S. Patent No. 4,953,868), Liu (U.S. Patent No. 5,451,047), Duran (U.S. Patent No. 5,405,138), Duran (U.S. Patent No. 5,577,966), Young (U.S. Patent No. 5,590,875), and Young (U.S. Patent No. 5,803,840).

In response, Applicants are submitting an entirely new description and new set of claims 2-13.

Applicants are prepared to submit a new drawing upon allowance of one or more claims.

**BASIS FOR REJECTION OF PRIOR CLAIM 1 AND ARGUMENTS FOR  
ALLOWABILITY OF NEW CLAIMS 2-13**

The Examiner has rejected claim 1 under 35 U.S.C. §112 as being narrative in form and replete with indefinite and functional or operational language. Applicants have cancelled claim 1 and submitted new claims 2-13, which new claims eliminate such narrative format and indefiniteness, and Applicants assert that such new claims should now be allowed.

The Examiner has also rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Thompson et al. (U.S. Patent No. 4,953,868) and the Examiner states that Thompson et al. discloses a swing-training device that is sound producing. In response, Applicants submit that Thompson discloses a golf swing training device. Thompson's device is similar to a golf club that can be swung in practice such that at the preferred acceleration of the device, it is said to produce a distinctive audible whistling sound. The means for producing the distinctive whistling sound is from holes on both sides of the shaft of the device, which has a hollow interior. As the device is swung, air enters the front holes and in exiting out the back holes produces the whistling sound. Applicants' invention device, on the other hand, is a device for learning how to swing a bat in baseball/softball to produce an effective full extension during the swing of the bat. Applicants' device is not related to golf at all. Furthermore, Applicants' invention device produces a distinctive snapping sound, as opposed to a whistling sound, as a result of a part of Applicants' device sliding the length of the interior of the device and striking a solid plug. There are no air holes in Applicants' device to produce a whistling sound. In addition, the snapping sound produced by Applicants' invention device will not be produced unless the device is properly swung, whereas Thompson's device will produce a whistling sound regardless of the manner in how the user swings his apparatus. For the reasons stated above, Applicants respectfully submit that Thompson does not anticipate or suggest the invention presently claimed in new claims 2-13.

The Examiner has further rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Liu (U.S. Patent No. 5,451,047) and the Examiner states that Liu discloses a sound-producing apparatus. In response, Applicants submit that Liu describes a bat-like sound producing apparatus. However, unlike Applicants' claimed invention device, Liu's device is solely for providing a "sound-producing apparatus" (column 1, lines 56-57), "a sound-producing apparatus

which can prevent the ball from becoming stuck in the handle section of the sound-producing apparatus" (column 1, lines 58-61), and "to provide a sound-producing apparatus which can enhance the amusing and interesting effects" (column 1, lines 62-64). Liu's device is not a training or teaching device and has no specification describing how it may teach a person to hit a baseball/softball in a better manner, unlike Applicants' invention. Liu's invention specifies an elongated hollow bat-like member with at least one steel ball enclosed, wherein the ball(s) slides or rolls over pleats in the intermediate section of the apparatus to produce a pleasing sound. Liu's apparatus' sound producing effect does not depend on properly swinging the apparatus. On the contrary, Liu's apparatus is intended to produce a sound regardless of how the apparatus is swung. Applicants' invention device, on the contrary, must be properly swung by the user to produce a sound and will not produce a sound unless the apparatus is swung in the proper manner. Applicants' invention device is used to teach a person how to properly swing a baseball/softball bat in order to have the most effective swing with the most power transferred to the baseball/softball.

Liu's apparatus is designed such that the shape is progressively larger in diameter from the handle through the intermediate section to the striking portion of the apparatus. Applicants' invention device, on the other hand, is a tube of uniform diameter. In Applicants' invention device, a sliding tube striking a steel pin produces the sound. Liu's sound is produced by a steel ball or balls bouncing around inside a hollow bat-like device and striking various areas therein including a plurality of pleats. By contrast, Applicants' invention device is designed to produce only one sound per swing, if the swing is proper, and no sound if the swing is not proper in form. Liu's apparatus can produce multiple sounds per swing, even if the swing is very poor in form. The sound produced by Applicants' invention device is different than the sound produced by Liu's apparatus. In addition, Liu's apparatus is heavier than Applicants' invention device, thereby limiting the ability of a user to perform multiple swings without potentially tiring, and thus limiting the number of repetitions necessary to develop the proper swing. For all the reasons stated, Applicants therefore respectfully submit that Liu does not anticipate Applicants' invention as set forth in new claims 2-13.

The Examiner has also rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Duran (U.S. Patent No. 5,405,138 and 5,577,966). In this regard, the Examiner states that Duran discloses sport swing training aids that provide audible feedback to players. Both patents by

Duran teach a sport swing training aid consisting of an elongated rod-like member with a first end for gripping and a second remote end representing the ball-striking area, wherein the rod-like member is hollow and corrugated. Such shape of the rod-like member permits the Duran device to produce a tone as air passes through the member during swinging, with the tone varying in length and pitch in direct proportion with the velocity and duration of the movement of the ball-striking end as it is swung.

Duran (5,577,966) also teaches an elongated rod-like member with a slidable sleeve that travels along the elongated rod-like member between the two ends producing a feel and sound of a ball striking upon impact between the ends. Duran's apparatus is an elongated rod-like member as opposed to Applicants' invention device, which consists of a uniform diameter hollow tube. Duran's apparatus makes a sound via the movement of air through the corrugated and hollow rod-like member. Applicants' invention device, on the other hand, makes a sound only if the device is properly swung releasing the inner hollow sliding tube, which strikes a solid plug making a snapping sound. The embodiment of Duran (5,577,966), most discussed, is a golf club (column 2, lines 52-53) and is illustrated in Figures 6, 7, 13, and 14, whereas Applicants' preferred embodiment is a snap bat for baseball/softball. Applicants respectfully submit, therefore, that neither of Duran's inventions teach or suggest the making of a baseball/softball training device containing the elements of Applicants' invention device, nor do Duran's inventions teach a method of using the device to train how to properly swing a baseball/softball bat, and therefore neither of Duran's inventions anticipate the claimed invention as now set forth in new claims 2-13.

The Examiner has further rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Young (U.S. Patent No. 5,590,875 and 5,803,840). The Examiner states that both inventions of Young disclose baseball bats that provide audible signal generating elements.

In response, Applicants note that Young (5,590,875) discloses a baseball bat device, which produces a whistling sound. The sound is caused by a whistle, which moves along a frictional slidable cylinder. In Young's device (5,590,875), air is introduced at the end plug of the bat through a plurality of openings into the inner tube. The pitch of the whistle is dependent on the speed of the bat. Conversely, Applicants' invention device produces no whistling sound. Applicants' hollow sliding tube produces a snapping sound only if Applicants' invention device is properly swung. Young's device will produce a whistle regardless of how the device is

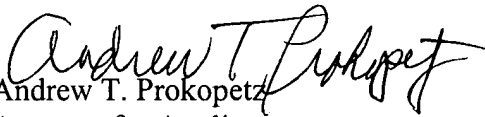
swung, whether properly or not. Young's device cannot tell the user if the user is properly swinging the bat to generate the proper power and extension at the point of impact of bat and ball. In addition, Young's device is designed to be used with an actual baseball. It should be recognized that with Applicants' disclosed plastic-foam rubber construction, Applicants' invention device is not meant to be used with a baseball/softball and doing so would destroy Applicants' invention device. In order for Young's device to be used with a baseball, it must have enough structural strength to withstand an impact with a baseball. This structural strength would indicate that it is heavier than Applicants' invention. Applicants have designed their device such that it is fairly light in weight, which permits a user to practice swings for a continued duration without tiring, thereby ingraining into the user the proper swinging motion. Young's device cannot be repetitively swung due to its weight for the same duration as Applicants' device making it less effective as a training tool.

Young (5,803,840) discloses an audible signal-generating element in a baseball bat. Specifically, Young discloses a bat with a sound module and signal processing unit enclosed within it. Young's device is designed to produce sounds in the form of a speech sound. Young's sound is produced regardless of how well the bat is swung, as a movable metal ball within the signal-processing unit moves to a contact point and completes the electrical circuit. Young does not disclose that the movement of the metal ball is dependent on a proper bat swing. Applicants' invention device does not produce any speech related sounds. Rather Applicants' invention device produces a snapping sound only if the bat is properly swung. In order for Applicants' bat training invention device to create a sound, it must be properly swung. If it is not, there will be no snapping sound emitted. Furthermore, Young's device is intended to be used with a baseball. Applicants' invention device is not meant to be used with a baseball/softball, and doing so would destroy the device. In order for Young's device to be used with a baseball, it must have enough structural strength to withstand an impact with a baseball. This structural strength would indicate that it is heavier than Applicants' invention. Applicants have designed their device such that it is fairly light in weight, which permits a user to practice swings for a continued duration without tiring, thereby ingraining into the user the proper swinging motion. Young's device cannot be repetitively swung due to its weight for the same duration as Applicants' device making it less effective as a training tool. For the reasons stated above, Applicants respectfully submit that neither of Young's devices anticipate Applicants' invention.

If the Examiner believes a telephonic conference with Applicants' attorney would expedite or conclude prosecution of this application, then the Examiner is cordially invited to contact Applicants' attorney at the below-listed number.

Applicants respectfully submit that new claims 2-13 are clearly allowable for the above-stated reasons and therefore request such allowance.

Respectfully submitted,



Andrew T. Prokopetz  
Attorney for Applicants  
Registration No. 52,134

Customer No. 029889  
919/683-5514  
Dated: March 10, 2003